

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:FIP:5

PLR-110903-20

Date:

July 16, 2020

### Legend

District =

City =

State =

Bonds =

Contractor =

Date 1 =

Date 2 =

Date 3 =

Amount 1 =

Date 4 =

Dear \_\_\_\_\_ :

This is in response to your request on behalf of the District for an extension of the expenditure period as defined in § 54A(d)(2)(B)(ii)<sup>1</sup> of the Internal Revenue Code (the “Code”)<sup>2</sup> for the available project proceeds of the Bonds.

### Facts and Representations

You make the following factual representations. The District is a unified school district organized and existing under the laws of the State and authorized to finance capital improvements to its facilities. The District issued the Bonds on Date 1 designated as new clean renewable energy bonds within the meaning of § 54C(a). The Bonds were issued to finance the purchase and installation of equipment constituting qualified renewable energy facilities pursuant to § 54C(d)(1) of the Code (the “Equipment”). The Equipment was to be installed at several sites owned by the District to provide electricity exclusively for the District.

Contractor was engaged to provide and install the Equipment on the District’s sites. Subsequent to issuance of the Bonds, Contractor proceeded with due diligence to provide and install the Equipment. By Date 2, the District had expended Bond proceeds totaling Amount 1.

However, several events have caused delays in completing the installation of the Equipment. During installation of the Equipment, the City refused to approve certain elements associated with the installed Equipment. Approval by the City is necessary to finish Equipment installation and a necessary milestone prior to payment of the remaining Bond proceeds. The City claimed that the Equipment, as installed by the Contractor, created surge issues for the City’s grid and, therefore, would not approve operation. The District and Contractor are involved in a dispute regarding which party is responsible for the additional costs associated with the changes necessary to address the issues raised by the City. In addition, the Equipment has not yet been installed at the last site because unexpected design changes needed to be made to the site, delaying construction. Lastly, stay-at-home orders related to the novel coronavirus disease 2019 have delayed resolution of the dispute with Contractor and installation at the last site.

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<sup>1</sup> Public Law No. 115-97, § 13404, 131 Stat. 2138 (2017), repealed the Code provisions related to tax credit bonds and direct pay bonds effective for bonds issued after December 31, 2017. References in this revenue procedure to these Code sections refer to those sections as in effect prior to repeal.

This unexpected series of events has resulted in unforeseen delays in the spend-down of the available project proceeds. The original three-year expenditure period for the Bonds under § 54A(d)(2)(B)(ii) of the Code (“Original Expenditure Period”) expired on Date 3. The District reasonably expects that issues relating to the Equipment surge and installation at the last site will be resolved and the remaining available project proceeds of the Bonds will be expended not later than Date 4.

District submitted its request for this ruling prior to the expiration of the Original Expenditure Period on Date 3.

### Law and Analysis

Section 54A(d)(1) of the Code provides that a new clean renewable energy bond is treated as a qualified tax credit bond for purposes of Section 54A.

Section 54A(d)(2)(B)(i) of the Code provides in part that to the extent that less than 100 percent of the available proceeds of the issue are expended by the close of the expenditure period for 1 or more qualified purposes, the issuer shall redeem all of the nonqualified bonds within 90 days after the end of such period.

Section 54A(d)(2)(B)(ii) of the Code provides that for purposes of this subpart, the term “expenditure period” means, with respect to any issue, the 3-year period beginning on the date of issuance. Such term shall include any extension of such period under clause(iii).

Section 54A(d)(2)(B)(iii) of the Code provides that upon submission of a request prior to the expiration of the expenditure period (determined without regard to any extension under this clause), the Secretary may extend such period if the issuer establishes that the failure to expend the proceeds within the original expenditure period is due to reasonable cause and the expenditures for qualified purposes will continue to proceed with due diligence.

Section 54A(e)(4) of the Code defines “available project proceeds” to mean (A) the excess of (i) the proceeds from the sale of an issue, over (ii) the issuance costs financed by the issue (to the extent that such costs do not exceed 2 percent of such proceeds), and (B) the proceeds from any investment of the excess described in subparagraph (A).

At the time the Bonds were issued, District reasonably expected to spend all available project proceeds within the Original Expenditure Period. The expected failure to spend all available project proceeds of the Bonds by the expiration of the Original Expenditure Period was due to reasonable cause. The expected failure was caused by events that were not reasonably expected at the time the Bonds were issued and were beyond the control of District. These events caused a significant delay in committing and spending the Bond proceeds.

District will spend the remaining available project proceeds of the Bonds with due diligence not later than Date 4.

### Conclusion

Under the facts and circumstances of this case, we conclude that District's failure to expend the available project proceeds of the Bonds by Date 3 was due to reasonable cause based on unexpected circumstances and that District's continued expenditure of the proceeds for qualified purposes will proceed with due diligence. Therefore, District is granted an extension of the Original Expenditure Period with respect to the Bonds until Date 4.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with a Power of Attorney on file with this office, a copy of this letter is being sent to District's authorized representatives.

The ruling contained in this letter is based upon information and representations submitted by District and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the materials submitted in support of the request for a ruling, it is subject to verification upon examination.

Sincerely,

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Timothy L. Jones  
Senior Counsel, Branch 5  
Office of Associate Chief Counsel  
(Financial Institutions and Products)